Government of
Saskatchewan

Special Joint Committee of the Senate and of the House of Commons on Senate Reform

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BRIEF PRESENTED BY THE

HONOURABLE J. GARY LANE, Q.C., MINISTER OF JUSTICE

GOVERNMENT OF SASKATCHEWAN

TO

SPECIAL JOINT COMMITTEE OF THE SENATE

AND OF THE HOUSE OF COMMONS

ON SENATE REFORM

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PREFACE

Canada is a country of regions. Indeed, as J.M.S. Careless noted "...the experience of regionalism remains prominent and distinctive in Canadian history - and time has tended less to erode it than to develop it." This persistence makes sense because people cannot easily be compelled to deny who they are and what made them that way.

Yet, today, there are still some political leaders in this country who refuse to appreciate and accept the regional nature of Canada. They would rather see it as an annoying problem that will eventually go away. However, the time for such an attitude has now passed.

We need no longer label those influences which enhance regional self-fulfillment as "balkanizing" or "divisive". We need no longer laud those influences which centralize decision-making in the hands of a few as being "in the national interest". Canadians cannot afford any longer the social and economic costs of policies which reflect this negative attitude.

With patriation of the Constitution we now have reached a stage in the development of our nation where it is essential for us to accept regionalism as an inevitable and positive part of our life together in Canada.

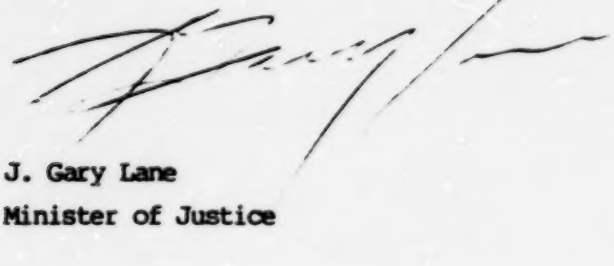
Thus, we now must begin to develop a process whereby the regional strengths of this country form the foundation of truly national policies.

This process could well begin with the reform of the Senate. But such reform should not be merely symbolic or cosmetic. Rather, the reform must be substantive so as to provide the Senate with real political power and purpose. Accordingly, I want to congratulate the members of the Committee for undertaking this difficult yet timely assignment.

No doubt the Committee already has been impressed by the complexity and scope of this task and has come to understand that any political process leading up to the eventual reform of the Senate will take time, entailing both a careful and serious consideration of the issues involved. Today it is imperative for us to avoid rushing into any quick-fix solution that may quite unintentionally result in an imbalance in Confederation.

Nevertheless, it is my personal belief that, with perseverance and determination, you can produce an important and much needed blueprint for Senate reform.

In order to assist the Committee in this task it is now my pleasure to present to you in this Brief the Government of Saskatchewan's formal submission on Senate Reform.



J. Gary Lane
Minister of Justice

INTRODUCTION

Any attempt to evaluate proposed changes to the Senate must take place within the larger context of the current structure and practice of Canadian federalism as a whole. This is essential in that one's assessment of proposed changes to the Senate must be prefaced with a clear view of the effect such changes would have on the workings of Parliament and Canadian federalism as a whole. Accordingly, this submission is intended to provide the Committee with the Government of Saskatchewan's perspective on this fundamental dimension of Senate reform. It is hoped that this submission will be of assistance to the Committee in developing its own general framework for evaluating the various options for Senate reform.

REGIONAL ALIENATION AND THE NEED FOR SENATE REFORM

> "The domination of the Atlantic and western regions of Canada by the Ontario - Quebec heartland has been and remains a continuing circumstance of Confederation. This domination includes not only politics and the economy as these are narrowly defined, but also such matters as broadcasting and the development of the arts, along with the capacity of institutions in the heartland to determine what things are on the Canadian agenda for discussion and resolution."(1)

As Professor Smiley makes clear it would be wrong to suggest, as some have done, that regional alienation is merely a sociological and therefore a temporary phenomenon. Rather, regional alienation in what Peter Newman has called "Outer Canada" is an expression of a much more serious long-term structural, economic and political problem.

Yet the national government's willingness to address objectively this fundamental economic and political problem has never been lower. Unfortunately, the politics of confrontation and not the politics of accommodation have come to dominate the federal government's attitude towards regional interests and aspirations. The end result is that all Canadians are now forced to bear the increasing economic costs that come with regional underdevelopment. But beyond this obvious economic burden we see in the confrontational politics of today, in national energy policy, in the Western grain transportation dispute and national general elections alike, disturbing signs that irrevocable damage is being done to that which we hold in common as Canadians.

The time has come for the federal government to put an end to the negative politics of confrontation, to refrain from utilizing the tactics of unilateralism when addressing regional demands. Rather, it is now essential for the national government to deal with these legitimate demands through the positive politics of accommodation. As McCormick et al write, "This would imply that the national government should not seek to pound the regions into submission, but rather should try to bring them into an effective and truly national partnership...to create a national purpose that accommodates rather than resists the regional identities that have proved so persistent and so important." (2)

The Government of Saskatchewan believes this to be the major intergovernmental challenge of the 1980's - to build policies of a truly national character upon the foundation of separate and unique regional identities.

As part of this challenge we believe that it is essential to provide for the effective representation of regional concerns within the institutions of the federal government. Thus, we were most pleased to see that this Committee was mandated to consider and to report on ways by which the Senate of Canada could perform this important task. However, it would be wrong to view the institutional reform of the Senate as a panacea for regional alienation. At best, constitutional reforms can only provide an increased opportunity for the effective reconciliation of regional concerns. However, they cannot compel us to seize these opportunities and to act accordingly. Thus, it is the Government of Saskatchewan's view that while the reform of the Senate would be an important achievement, such reform would not in and of itself resolve the serious divisions in this country. Rather, it is this Government's view that we can deal seriously with the problem of regional alienation only when the provincial and federal governments agree to discuss, in a spirit of mutual co-operation, those fundamental disputes that have arisen as a result of the distribution between the two orders of government of revenues and of legislative and executive powers.

THE SENATE WITHIN THE CONTEXT OF CANADIAN FEDERALISM

In Canada, there has been an almost continuous debate over the relative merits of the federal bargain agreed upon by the Fathers of Confederation in 1867.

Indeed, even during the Confederation debate this was the major issue of concern. Antoine A. Dorion, for example, expressed the minority position that the federal bargain was dangerously flawed since it would give "...all the powers to the Central Government, and reserves for the local governments the smallest possible amount of freedom of action."(3) Sir John A. Macdonald, on the other hand, in expressing the majority position countered that the federal bargain would result in a happy medium, giving the new federation "...the strength of a Legislative union and the sectional freedom of a federal union, with protection to local interests."(4)

Macdonald and the majority of the Fathers of Confederation thought that this balance had been appropriately achieved in part through provisions contained in the B.N.A. Act which ensured with some exceptions that the totality of law-making powers would be distributed between the two orders of government. But the Fathers of Confederation also understood that if the federal bargain was to succeed, regional groups needed an effective outlet for expressing their concerns in the institutions of the federal government.

It was expected by the Fathers that the Senate would be one of the central institutions of government that would perform this role. However, they also thought that it was equally important for the Senate to defend property rights and to perform the task of legislative review; that is, according to Macdonald "the sober second thought in legislation". In accordance with the dictates of parliamentary government, the Senate was intended to be a secondary chamber, able to ensure a moderating influence on the House of Commons. To this end, the Fathers invested the national government with the power of appointment.

Today, it is this method of appointment rather than the personnel of the upper chamber which is seen as the major defect that prevents the Senate from effectively carrying out those functions that were intended of it by the Fathers of Confederation. There are basically two aspects to this problem.

1. Any appointed body in an age when the democratic ethos prevails is seen as an archaic body - a quaint remnant of an age that has passed. Thus, the Senate cannot oppose the House on fundamental issues of regional or national concern since it lacks the moral authority and legitimacy which is normally conferred through democratic elections.

2. The second aspect also relates to the fact that Senators are appointed, specifically the manner in which they are appointed. Generally, throughout the last 100 years Senate appointments have been used as a means of dispensing patronage by the governing national party, and not to ensure that regional interests are represented, as was intended by the Fathers of Confederation. And since there is no tradition of consultation with the provinces with respect to these appointments Senators do not even possess the legitimacy that would be afforded by a provincial base.

SENATE REFORM: THE GOVERNMENT OF SASKATCHEWAN'S PERSPECTIVE

It is the Government of Saskatchewan's position that the Senate's potential to be an effective actor within the institution of Parliament no longer needs to be wasted. This Government believes that the Senate should be strengthened to become a chamber with real and legitimate political power and purpose. It is this Government's position that the Senate must be revitalized with the following primary objectives:

1. To enhance the ability of the central government to reflect and represent adequately the interests of all the regions of Canada and to be generally seen so to do.
2. To provide a focus for the impartial resolution of conflict between the two orders of government.

However, it is also essential that any proposed changes to the Senate:

1. preserve those functions the Senate currently does well, i.e. the legislative review and support function,
2. be simple and easy to implement,
3. be acceptable to provincial and federal governments alike,
4. provide for the equal, or at least near-equal, representation of the provinces of Canada and appropriate representation for the territories,
5. will mean an actual as opposed to merely symbolic increase in the powers, authority and legitimacy of the Senate.

In outlining the Saskatchewan perspective on Senate reform it must be re-emphasized that Confederation was a political bargain and that the "happy medium" or balance struck by the Fathers of Confederation in 1867 must be retained. Thus, while this Government believes it essential to enhance the role and legitimacy of the Senate so that it can fulfill all those functions assigned to it by the Constitution, this must not be done in such a way as to undermine the authority and legitimacy of the House of Commons. The principle of parliamentary government must be preserved.

The Government of Saskatchewan believes that it is within this general framework that the Committee must carefully judge the relative merits of all the proposed options for Senate reform. This is not an easy task, but, at the very least, it is hoped that our submission will narrow down the choice of options that need to be considered by the Committee.

CONCLUSION

It is the Government of Saskatchewan's view that a properly reformed Senate will provide a much needed framework in Parliament within which regional concerns and aspirations can find expression. If reform based on the principles discussed in this Brief is not achieved then the Government of Saskatchewan would favour serious consideration being given to abolition of the Senate. No Senate at all is better than an unreformed Senate. But a substantially reformed Senate, the Government of Saskatchewan believes, is the best of all options.

Nevertheless, it is important to refrain from the one-dimensional assumption that Senate reform, or any institutional reform for that matter, can resolve by itself the serious divisions in this country. Such an assumption would deny those very important and, in the long run, decisive economic and social forces which determine the Canadian experience.

At this time, our efforts in the field of federal-provincial relations should not be directed only towards constitutional reform; they should be directed also towards the mutually inclusive goals of attaining fair and equitable agreements on tax-sharing, equalization payments, and regional development.

These objectives can be achieved only when the independence and exclusivity of power entrusted to each order of government is tempered by mutual co-operation and consultation. Neither order of government should attempt to unilaterally impose its priorities and programs upon the other, especially in areas of shared jurisdiction and in areas within the jurisdiction of the other. Thus, while the federal principle implies that each order of government enjoys absolute power within the specific spheres of activity assigned to it by the Constitution of Canada, it should never be forgotten that the federal system is a union, and not a competition, between the two orders of government.

NOTES

1. Smiley, D.V., Canada in Question: Federalism in the Eighties, Toronto: McGraw-Hill, 1980, pp 261-262.

2. McCormick, P., Manning, E., Gibson G., Regional Representation, The Canadian Partnership, Calgary, Task Force Report prepared for the Canada West Foundation, 1981, p. X.

3. The Confederation Debates in the Province of Canada/1865, Edited by P.B. Waite, McClelland and Stewart Limited, p. 89.

4. Ibid., p.43.